

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 Rosa Garcia, et al.,

4 Plaintiffs

5 v.

6 United States of America

7 Defendant.

Civil No. 09-1674 (SEC)

8 **OPINION AND ORDER**
9

10 Before the Court are a motion to dismiss filed by Defendant the United States of America
11 (Docket # 15) and Plaintiffs' opposition thereto. Docket # 21. Plaintiffs are the widow and sons
12 of the late Ramon R. Roca-Gomez who passed away victim of cancer . Dockets #1, ¶¶ 2 and
13 7. Plaintiffs filed suit under the Federal Torts Claims Act ("FTCA"), 28 U.S.C. § 2671 *et. sec.*,
14 for negligent medical treatment Roca-Gomez allegedly received at the San Juan Veterans
15 Affairs' Hospital (the "VA"). Defendant moves to dismiss Plaintiffs' claims as time barred,
16 arguing that Plaintiffs filed the prerequisite administrative claims 22 days after the expiration
17 of the FTCA's statute of limitation. Docket # 15, p. 1-3. Plaintiffs oppose dismissal, stating that
18 they mailed their administrative claims to the VA 12 days before the applicable deadline.
19 Docket # 21, ¶¶ 2-4.

20 For purposes of the FTCA statute of limitation, the critical date is when claims are
21 received by an administrative agency, and not the date in which the claims are mailed. 28 C.F.R.
22 § 14.2 (a) ("For purposes of the provisions of 28 U.S.C. 2401(b), 2672, and 2675, a claim shall
23 be deemed to have been presented when ... receive[d] from a claimant...."). Plaintiffs do not
24 dispute that the VA received their administrative claims after the statutory period expired, and
25 the evidence of record clearly shows that such was the case. See Dockets ## 21 - 21-6.
26 Accordingly, the Court finds that Plaintiffs' claims are time barred and, as a result, dismisses

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them for lack of subject matter jurisdiction. See Gonzalez v. U.S., 284 F.3d 281, 288 (1st Cir. 2002) (“[I]t is well-settled that an FTCA claim must be dismissed if a plaintiff fails to file a timely administrative claim. This Court has repeatedly held that compliance with this statutory requirement is a jurisdictional prerequisite to suit that cannot be waived.”) (internal citations omitted).

Conclusion

Based on the foregoing, Plaintiffs’ claims are **DISMISSED** with prejudice.

IT IS SO ORDER.

In San Juan, Puerto Rico, this 5th of November 2010.

s/Salvador E. Casellas
SALVADOR E. CASELLAS
U.S. Senior District Judge